

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT

In the Matter of:

For: Revocation of Certificate of  
Partnership

KATUWANG POULTRY CHICKEN EGG  
PRODUCING, CO.  
SEC No. PG202106004

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ORDER OF REVOCATION

KATUWANG POULTRY CHICKEN EGG PRODUCING, CO. (“KATUWANG POULTRY”) was registered with the Commission as a partnership on 01 June 2021 under Company Registration No. **PG202106004** with the following as its partners:

| Name                  | Citizenship | Residential Address                                                                                             |
|-----------------------|-------------|-----------------------------------------------------------------------------------------------------------------|
| Manny Nuque Fernandez | Filipino    | Upper Pinget Pinget Baguio City, Benguet, CAR, Philippines                                                      |
| Philip L. Mercado     | Filipino    | 1194 1 <sup>st</sup> Street Santo Niño, Angono, Rizal, Region IV-A, Philippines                                 |
| Nestor Castro         | Filipino    | Blk 5 Lot 11 Samadores St. Luzon Avenue, Matandang Balara, Quezon City, Second District, NCR, Philippines, 1800 |

The Business Purpose of KATUWANG POULTRY as stated in its Articles of Partnership is:

*“To operate, manage and engage in the business of chicken egg production including incidental activities related thereto.”*

On May 2021, the EIPD received an e-mail that individuals or group of individuals representing KATUWANG POULTRY operated by its partners, **Manny Nuque Fernandez, Phillip L. Mercado** and **Nestor Castro**, were enticing the general public to invest in their business venture without securing the necessary licenses to sell or offer shares of stocks and other investment-taking schemes.

It appears from several emails received by the Commission on separate dates, that KATUWANG POULTRY is offering its scheme through Facebook. In one of the e-mails sent to the department, the sender inquired regarding the legitimacy of the partnership quoted as follows:

“Hi,

I would like to inquire if Katuwang Poultry Chicken Egg Producing with SEC Registration Number PG202106004 is authorized to solicit money from the public as part of their co-partnership program. They have a similar setup to the FMD Logistics. I just want to make sure that their process is legal before investing with them.

They have marketing schemes on their FB page and videos of their farm.

Thank you.”

As part of its investigation, the Enforcement and Investor Protection Department (EIPD) requested the Company Registration and Monitoring Department (CRMD) for a confirmation on whether KATUWANG POULTRY is an SEC-registered entity and whether it has been issued a secondary license by the Commission.

In reply to EIPD’s request, the CRMD certified that **KATUWANG POULTRY CHICKEN EGG PRODUCING, CO.** with **SEC No. PG202106004** was indeed registered on 01 June 2021.

Further, the CRMD certified that records of the Commission show that KATUWANG POULTRY has not been issued a secondary license as a Lending Company, Broker and/or Dealer of Securities, Dealer in Government Securities, Investment Adviser of an Investment Company, Investment House and Transfer Agent and it has not filed nor has any pending application for a secondary license with the Department.

The EIPD likewise inquired with the Markets and Securities Regulation Department (MSRD) and the Corporate Governance and Finance Department (CGFD) if KATUWANG POULTRY has been issued or has a pending application for a registration/permit to sell securities and license to offer or sell securities to the public.

The MSRD certified that as per records on file with the Department, **KATUWANG POULTRY CHICKEN EGG PRODUCING, CO.** has NOT registered any securities pursuant to Sections 8 and 12 of the Securities Regulation Code (SRC). Likewise, the Department has not issued a Permit to Sell Securities in favor of **KATUWANG POULTRY CHICKEN EGG PRODUCING, CO.** Further, said entity has not filed nor has any pending application for registration/permit to sell securities.

Meanwhile, the CGFD certified that based on records on file with the Commission, **KATUWANG POULTRY CHICKEN EGG PRODUCING, CO.** is not a registered issuer of mutual funds, exchange traded funds, proprietary/non-proprietary shares or membership certificates, timeshares pursuant to Sections 8 and 12 of the SRC and therefore not licensed to offer or sell such securities to the public.

The department conducted further investigation regarding the operations of the KATUWANG POULTRY. Based on the online investigation conducted, it was confirmed that the said entity has been offering investment contracts to the public through the social media site, Facebook.

The investigation revealed that KATUWANG POULTRY has been offering investment contracts to the public with a promise of high returns in just 6 months. The potential profit promised by the respondent partnership ranges from 48% up to 120% in 6 months.



EARN  
48% IN 6 MONTHS

50K-99K

1<sup>st</sup> Month Dividend: 8%

2<sup>nd</sup> Month Dividend: 8%

3<sup>rd</sup> Month Dividend: 8%

4<sup>th</sup> Month Dividend: 8%

5<sup>th</sup> Month Dividend: 8%

6<sup>th</sup> Month Dividend: 8%

LOCK FOR 6 MONTHS.

REF COM 10%



Katiwang Poultry  
CHICKEN EGG PRODUCING

EARN  
60% IN 6 MONTHS

100K-299K

1<sup>st</sup> Month Dividend: 10%

2<sup>nd</sup> Month Dividend: 10%

3<sup>rd</sup> Month Dividend: 10%

4<sup>th</sup> Month Dividend: 10%

5<sup>th</sup> Month Dividend: 10%

6<sup>th</sup> Month Dividend: 10%

LOCK FOR 6 MONTHS.

REF COM 10%



Katiwang Poultry  
CHICKEN EGG PRODUCING

EARN  
90% IN 6 MONTHS

300K-499K

1<sup>st</sup> Month Dividend: 15%

2<sup>nd</sup> Month Dividend: 15%

3<sup>rd</sup> Month Dividend: 15%

4<sup>th</sup> Month Dividend: 15%

5<sup>th</sup> Month Dividend: 15%

6<sup>th</sup> Month Dividend: 15%

LOCK FOR 6 MONTHS.

REF COM 10%



Katuwang Poultry

CHICKEN EGG PRODUCING

EARN  
120% IN 6 MONTHS

500K & UP

1<sup>st</sup> Month Dividend: 20%

2<sup>nd</sup> Month Dividend: 20%

3<sup>rd</sup> Month Dividend: 20%

4<sup>th</sup> Month Dividend: 20%

5<sup>th</sup> Month Dividend: 20%

6<sup>th</sup> Month Dividend: 20%

LOCK FOR 6 MONTHS.

REF COM 10%



Katuwang Poultry

CHICKEN EGG PRODUCING

The proposed investment involves a lock-in period where the prospective investor will merely wait for 6 months to earn up to 120% in profits. Based on the packages offered by KATUWANG POULTRY and its agents, the bigger the initial investment or capital given to the partnership, the bigger the profit will be.

Besides the ridiculous promise of 120% profit, KATUWANG POULTRY also offers a referral commission amounting to 10%. The said entity also uses and posts its certificate of registration of partnership as an enticement to the public of its alleged legal operations, when in fact, such registration does not amount to an authority to offer investment contracts to the public.

On 21 September 2021, the Commission issued an Advisory against KATUWANG POULTRY. As posted on the SEC website, the Advisory stated that the investing public should be wary of the activities of the said entity because it is offering investment contracts without the necessary license or authority to do so.

After the posting of the Advisory against KATUWANG POULTRY, a Show Cause Order was issued against it that its activities violate Section 8.1 of the Securities Regulation Code which prohibits the public offering and selling of securities without the necessary licenses required and thereby, committing serious misrepresentation as to what the partnership can do or is doing to the great prejudice or damage to the general public in violation of Section 6(i)(2) of Presidential Decree 902-A.

The order of the EIPD reads, in part, as follows:

**“IN VIEW OF THE FOREGOING, you are hereby directed to submit a Verified Answer or Explanation **within fifteen (15) days from receipt hereof** to:**

- (1) SHOW CAUSE** why no administrative sanctions and/or criminal charges should be imposed/filed against **KATUWANG POULTRY CHICKEN EGG PRODUCING CO.** and/or its partners for violation of the Securities Regulation Code, and other pertinent laws, rules and regulations of the Commission; and
- (2) SHOW CAUSE** why the Certificate of Partnership of **KATUWANG POULTRY CHICKEN EGG PRODUCING CO.** should not be revoked pursuant to Section 6(i)(2) of Presidential Decree No. 902-A for serious misrepresentation as to what it can do or is doing to the great prejudice of or damage to the general public.

Failure to comply with this Show Cause Order within the period stated above shall be considered a waiver of the company’s right to be heard and the Department shall be constrained to proceed based on available evidence with the appropriate enforcement and legal action pursuant to the laws, rules and regulations, Circulars, and Orders being implemented by the Commission. “

As part of due process requirements, the Department endeavored to serve the Show Cause Order upon KATUWANG POULTRY’s registered address/principal office appearing in its Articles of Partnership, i.e., Unit 1504 #5 West Avenue Corner Martinez St. Nayong Kanluran, Quezon City, Second District, NCR, Philippines 1104. However, said office of the respondent corporation had already been abandoned. The EIPD also attempted to serve the Show Cause Order upon partner Philip Mercado whose address turned out to be false, while the residents of the area where partner Nestor Castro is supposed to reside do not know him at all.

Nonetheless, the Department sent on 8 November 2021, the Show Cause Order to the partnership’s official email per records of the SEC, which is: admin@iaqount.com

To date, despite such receipt and presumptive notice of the Show Cause Order as detailed above, the company failed to respond and its failure shall be construed as a waiver of its opportunity to be heard.

Hence, we now resolve the instant proceedings on the basis of available evidence.

Section 8 paragraph 8.1 of the SRC clearly states that “securities shall not be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission.”

Based on the evidence gathered, KATUWANG POULTRY is engaged in the offering, solicitation and sale of securities to the public without the required registration statement duly filed and approved by the SEC.

In the instant case, the investment scheme of KATUWANG POULTRY where an investor places a minimum amount of money according to the package he availed of and shall be locked-in for a period of 6-months to be invested in the supposed eggs-production venture, falls within the definition of “**securities**” under **Section 3.1 of the Securities Regulation Code** which are “*shares, participation or interest in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract, instrument, whether written or electronic in character. It includes:*

xxx

**(b) investment contracts**, certificates of interest or participation in a profit sharing agreement, certificates of deposit for a future subscription; xxx.”

In relation thereto, Rule 26.3.5 of the 2015 Implementing Rules and Regulations of the SRC defines an investment contract and a common enterprise as follows:

*An **investment contract** means a contract, transaction or scheme (collectively “contract”) whereby a person invests his money in a common enterprise and is led to expect profits primarily from the efforts of others.*

*An investment contract is presumed to exist whenever a person seeks to use the money or property of others on the promise of profits.*

*A **common enterprise** is deemed created when two (2) or more investors “pool” their resources, creating a common enterprise, even if the promoter receives nothing more than a broker’s commission.”*

In *SEC vs. Howey Co.* (66 S.Ct.1100 27 May 1946), the U.S. Supreme Court concluded that arrangements whereby the investors’ interest are made manifest involve investment contracts, regardless of the legal terminology in which such contracts are clothed.

Further, the elements of an investment contract were enumerated in the case of *Power Homes Unlimited Corporation vs. SEC* (G.R. No. 164182, 26 February 2008) citing the so-called Howey Test enunciated in *Howey* and was later modified in the case of *SEC vs. Glenn W. Turner Enterprises, Inc.* (474 F.2d476 1 February 1973), as follows:

- A contract, transaction or scheme;
- An investment of money;
- A common enterprise;
- Expectation of profits; and
- Profits arises primarily from the entrepreneurial and managerial efforts of others.

Applying the foregoing, the investment scheme being perpetrated by KATUWANG POULTRY falls within the ambit of an investment contract. By investing in the scheme offered by KATUWANG POULTRY, the investor **enters into a contract** where there is a placement of money where for a certain amount of capital invested, there will be a high return of money in the form of a commission. **The money invested is placed in a common enterprise and the investor expects to derive profits.** Finally, the investor **expects to earn profits from the entrepreneurial and managerial efforts of**

**others.** The investor need not do anything in order to earn the said return on their investment. The direct referral commissions and the pairing bonus are employed for the investor to earn additional shares to his account.

In the case of *SEC vs. CJH DEVELOPMENT CORPORATION (G.R. No. 210316, 28 November 2016)* the Supreme Court held that:

“The act of selling unregistered securities would necessarily operate as a fraud on investors as it deceives the investing public by making it appear that respondents have authority to deal on such securities. **Section 8.1 of the SRC** clearly states that securities shall not be sold or offered for sale or distribution within the Philippines without a registration statement duly filed with and approved by the SEC and that prior to such sale, information on the securities, in such form and with such substance as the SEC may prescribe, shall be made available to each prospective buyer.”

On the other hand, a “Broker” is defined under Section 3.3. of the SRC as a person engaged in the business of buying and selling securities for the account of others. “Salesman” is defined under 3.13 of the SRC as a natural person, employed as such or as an agent, by a dealer, issuer or broker to buy and sell securities.

Consequently, Section 28 of the SRC provides that:

“SEC. 28. **Registration of Brokers, Dealers, Salesman and Associated Persons.** – 28.1. No person shall engage in the business of buying or selling securities in the Philippines as a broker or dealer, or act as a salesman, or an associated person of any broker or dealer unless registered as such with the Commission.”

Thus, any person, without proper registration or license from the Commission who acts as brokers or agents of a company selling or convincing people to invest in the investment scheme including solicitations or recruitment through the internet may likewise be prosecuted and held criminally liable under Section 28 of the SRC and penalized with a maximum fine of Five Million pesos (P5,000,000.00) or penalty of Twenty One (21) years imprisonment or both pursuant to Section 73 of the SRC.

Said investment contract, being in the nature of securities, is required under Section 8 of the SRC to be registered before being offered or sold to the general public. However, based from the records of the Commission, there is no registration nor has an application for registration been filed by KATUWANG POULTRY in violation of the provisions of Sections 8 and 12 of the SRC.

Moreover, the act of KATUWANG POULTRY in allowing its members to discuss, orient and make the public familiar with its schemes and inviting the latter to join the company through its official Facebook page posts, constitutes **public offering** as defined under Rule 3.1.17 of the Implementing Rules and Regulations of the SRC, which provides:

“**Public Offering**” is any means offering of securities to the public or to anyone, whether solicited or unsolicited. Any solicitation or presentation of securities for sale through any of the following modes shall be presumed to be a public offering:

3.1.17.1 Publication in any newspaper, magazine or printed reading material which is distributed within the Philippines or any part thereof;

3.1.17.2 Presentation in any public or commercial place;

**3.1.17.3 Advertisement or announcement** on radio, television, telephone, **electronic communications, information communication technology or any other forms of communication**; or

3.1.17.4 Distribution and/or making available flyers, brochures or any offering material in a public or commercial place, or to prospective purchasers through the postal system, **information communication technology and other means of information distribution.**" (Emphasis supplied)

Public offering is evident in this case because several representatives of KATUWANG POULTRY enticed the public to invest in its business through posts and group discussions in social media platforms, particularly in Facebook and YouTube, where agents and representatives actively advertise and encourage their friends to invest in KATUWANG POULTRY.

Likewise, the investment scheme of KATUWANG POULTRY of promising returns of up to 120% in 6 months, has the characteristics of a Ponzi scheme. A **Ponzi scheme** is an investment program that offers impossibly high returns and pays these returns to early investors out of the capital contributed by later investors. Named after Charles Ponzi who promoted the scheme in the 1920s, the original scheme involved the issuance of bonds<sup>1</sup> which offered 50% interest in 45 days or a 100% profit if held for 90 days. Basically, Ponzi used the money he received from later investors to pay extravagant rates of return to early investors, thereby inducing more investors to place their money with him in the false hope of realizing this same extravagant rate of return themselves.

In the case of *People of the Philippines vs. Palmy Tibayan and Rico Z. Puerto* (G.R. Nos. 209655-60, 14 January 2015), the Supreme Court held that:

"To be sure, a Ponzi scheme is a type of investment fraud that involves the payment of purported returns to existing investors from funds contributed by new investors. **Its organizers often solicit new investors by promising to invest funds in opportunities claimed to generate high returns with little or no risk.** In many Ponzi schemes, the **perpetrators focus on attracting new money to make promised payments to earlier-stage investors to create the false appearance that investors are profiting from a legitimate business.** It is not an investment strategy but a gullibility scheme, which works only as long as there is an ever increasing number of new investors joining the scheme. It is difficult to sustain the scheme over a long period of time because the operator needs an ever larger pool of later investors to continue paying the promised profits to early investors. The idea behind this type of swindle is that the "con-man" collects his money from his second or third round of investors and then absconds before anyone else shows up to collect. Necessarily, Ponzi schemes only last weeks, or months at the most." (Underscoring and emphasis supplied.)

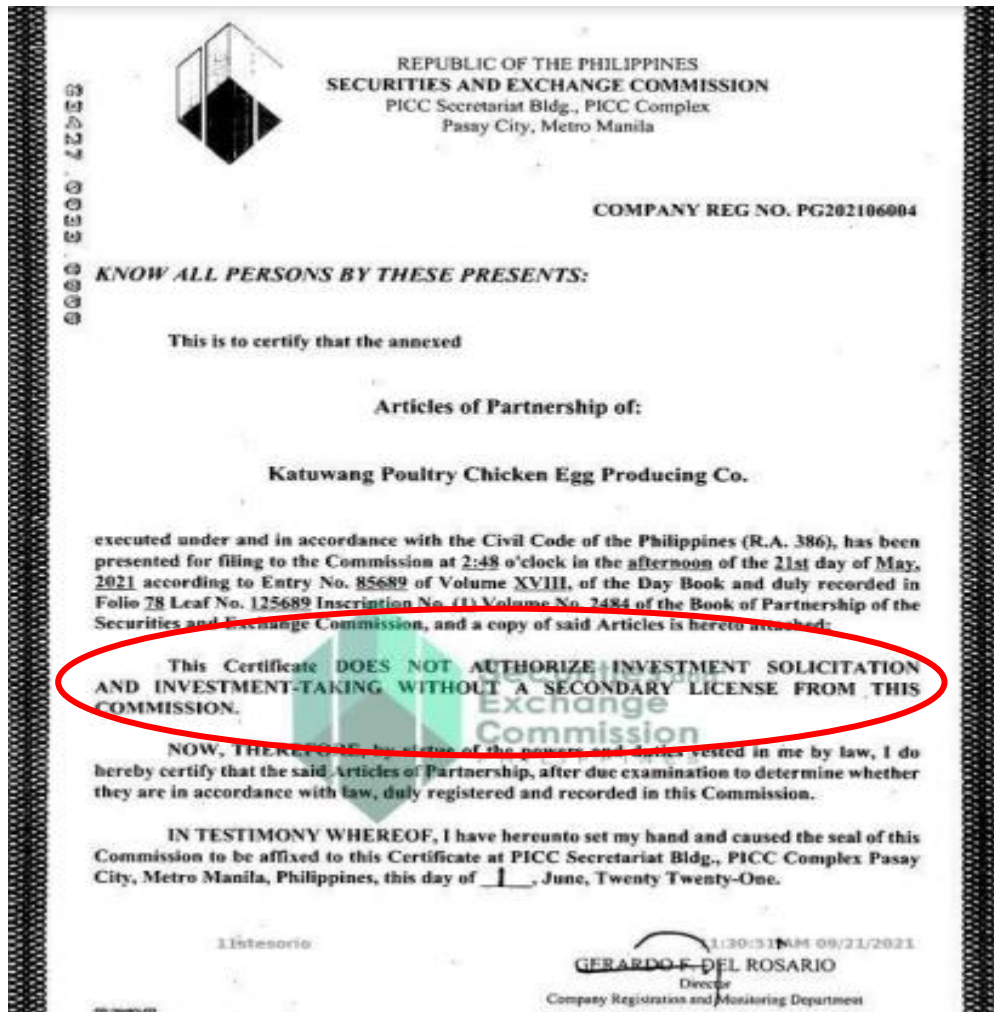
It is important to emphasize that KATUWANG POULTRY as a juridical person, is only allowed to exercise powers inherent to its existence and those conferred in its Articles of Partnership. In other words, what a partnership can do is necessarily circumscribed by its purpose clause in its AOP.

Nonetheless, the business purpose stated in the Articles of Partnership need not set out with particularity the multitude of activities in which the partnership may engage. The effect of broad purposes or objects is to confer wide discretionary

<sup>1</sup> Actually, postal reply coupons

authority upon the partners or management of the partnership as to the kinds of business in which it may engage. However, ***dealings which are entirely irrelevant*** to the purposes are unauthorized. The purpose clause of the articles of partnership indicates the extent as well as the limitations of the powers which a partnership may exercise.

In fact, the Certificate of Registration issued to KATUWANG POULTRY explicitly ***prohibited it to operate an investment-taking scheme***:



The investment scheme of KATUWANG POULTRY also operates to defraud investors as it deceives the investing public by making it appear that it has the authority to deal in securities. This also amounts to serious misrepresentation as to what it can do or is doing to the damage and prejudice of the investing public.

Under Section 6 of Presidential Decree 902-A, the Commission has the power to suspend, or revoke, after proper notice and hearing, the franchise or certificate of registration of corporations, partnerships and associations, on the ground of serious misrepresentation as to what they can do or are doing to the great prejudice of or damage to the general public. Likewise, Section 5.1 (m) of the SRC empower the Commission to revoke the franchise or Certificate of Incorporation/registration of corporations and partnerships registered with it.

Further, in SEC Admin Case No. 11-10-124 entitled *In re: PHILBIO Renewable Energy Resources Corp.*, promulgated on 27 April 2016, the Commission provided what constitutes serious misrepresentation, to wit:

*“From the foregoing, it is indubitable that PHILBIO misrepresented itself to the public that it can solicit investments despite the fact that it is **not one of the purposes of the corporation**. Worse, it **does not have a license to offer/sell securities**. PHILBIO operates an investment-taking scheme which is therefore considered an **ultra vires act**. These constitute serious misrepresentation as to what the corporation can do or doing to the great prejudice to the general public.”*

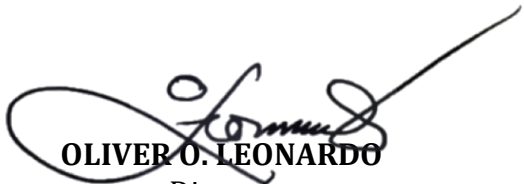
Considering that nowhere is it stated in the business purpose of KATUWANG POULTRY that it is authorized to engage in investment-solicitation activities through the offering or selling for public sale securities in the form of investment contracts, compounded by the fact that it does not have the required Secondary License from the Commission to offer or sell securities to the public, its activity of selling or offering to the public securities in the form of investment contracts constitutes serious misrepresentation as to what the partnership can do to the great prejudice of or damage to the general public which is a ground for the revocation of a partnership’s registration with the Securities and Exchange Commission.

**WHEREFORE**, for violation of Sections 8.1 and 28.1 of the Securities Regulation Code in relation to Section 6 (i)(2) of P.D. 902-A and Section 5.1 (m) of the SRC, the registration of **KATUWANG POULTRY CHICKEN EGG PRODUCING, CO.** as a partnership is hereby **REVOKED**.

Accordingly, let this Order be attached by the Corporate Filing and Records Division of the Company Registration and Monitoring Department (CRMD) to the records of the partnership on file with the Commission. Further, the Information and Communications Technology Department (ICTD) of this Commission is likewise requested to enter the “revoked” status of the subject partnership in the online database of the Commission.

**SO ORDERED.**

Makati City, 29 July 2022.

  
**OLIVER O. LEONARDO**  
Director